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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120321209-2643-02]

RIN 0648-BC08

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Framework Adjustment 5

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is broadening the scope of individuals and entities approved to complete vessel fish hold capacity certifications for vessels issued Tier 1 and 2 limited access Atlantic mackerel permits under the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (MSB FMP). In addition, this rule extends the deadline to submit vessel fish hold capacity certifications from December 31, 2012, to December 31, 2013 or during a vessel replacement transaction, whichever comes first.

DATES: Effective on [insert date of filing for public inspection with the Office of the FEDERAL REGISTER].

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management Council, including the Framework Document, are available from: Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street,

Dover, DE 19901. The Framework Document is also accessible via the Internet at

<http://www.nero.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Lindsey Feldman, Fishery Management

Specialist, 978- 675-2179, fax 978-281-9135.

SUPPLEMENTARY INFORMATION:

Background

NMFS published a proposed rule for Framework Adjustment 5 on September 21, 2012 (77 FR 58507). Additional background information and detail on why and how Framework Adjustment 5 was developed are included in the proposed rule, and are not repeated here. Amendment 11 to the MSB FMP (76 FR 68642, November 7, 2011) implemented a three-tiered mackerel limited access program in which all qualifiers were required to have possessed a valid permit on March 21, 2007. The final rule implementing Amendment 11 provided that a fish hold capacity certification must be made by an individual credentialed as a Certified Marine Surveyor with a fishing specialty by the National Association of Marine Surveyors (NAMS), or by an individual credentialed as an Accredited Marine Surveyor with a fishing specialty by the Society of Accredited Marine Surveyors (SAMS). Vessel owners who have received a certification of their vessel's fish hold capacity by the Maine State Sealer of Weights and Measures also meet the fish hold capacity requirement. Vessel owners are required to submit documentation in support of their vessel's certified fish hold capacity to NMFS by December 31, 2012, or their first vessel replacement or upgrade, whichever comes first.

This action revises the fish hold capacity certification requirement to allow additional individuals or entities beyond those with credentials approved in Amendment 11 to complete

fish hold capacity certifications. This framework action does not make any changes from the proposed rule and expands the range of individuals and entities that are approved to complete hold capacity certifications and allow them also to be completed by employees or agents of a classification society approved by the Coast Guard pursuant to 46 U.S.C. 3316(c), Maine State Sealer of Weights and Measures, a professionally licensed and/or registered Marine Engineer, or a Naval Architect with a professional engineer license. This action also extends the date that vessels are required to submit fish hold capacity measurements by 1 year. Due to a delay in rulemaking, vessels with mackerel Tier 1 and 2 permits will be required to submit fish hold capacity measurements by December 31, 2013, or their first vessel replacement or upgrade, whichever comes first, instead of December 31, 2012.

Comments and Responses

NMFS received four comments on the proposed rule for Framework Adjustment 5 from: Lund's Fisheries, Inc., a processing facility in Cape May, NJ; Quest Marine Services, a marine surveying company; a vessel owner with a mackerel permit; and a member of the general public.

Comment 1: Quest Marine Services commented that the list of individuals or entities approved to conduct vessel capacity measurements should include independent accredited marine surveyors that are not members of a classification society such as NAMS or SAMS. They noted that independent surveyors have experience necessary to conduct commercial fishing vessel surveys and have long-standing relationships with the commercial fishing industry. They also commented in support of extending the deadline to submit vessel capacity measurements from December 31, 2012, to December 31, 2013.

Response: Although independent marine surveyors may have experience completing commercial fishing vessel surveys and vessel hold capacity calculations, there are no accreditation requirements for such surveyors. Without any type of accreditation, such as being a member of a classification society, having a degree in naval architecture, etc., it is not possible for us to verify the qualifications of an independent marine surveyor. Therefore, NMFS does not support the inclusion of independent marine surveyors in the list of individuals or entities approved to complete vessel capacity measurements for Tier 1 and Tier 2 mackerel vessels.

Comment 2: Lund's Fisheries, Inc., commented in support of broadening the scope of individuals approved to complete vessel capacity measurements, but did not support the inclusion of Maine State Sealer of Weights and Measures as an approved entity as the state's method of certifying hold capacities is based on a volumetric measurement using hogsheads, which was developed for the Atlantic herring, but not the mackerel fishery. Lund's suggested the use of cubic feet as a standardized measurement and that NMFS hold a workshop to develop a universal standard for fish hold standardization in the mackerel fishery.

Response: NMFS does not agree that the Maine State Sealer of Weights and Measures should be removed from the list of approved entities to complete vessel capacity measurements. The vessel capacity measurement requirement was implemented as a baseline measurement that will limit future upgrades to Tier 1 and 2 mackerel permits to 10 percent above the certified baseline vessel hold capacity. The unit of such measurements may vary depending on the methodology used by the approved individual or entity (for example, the Maine State Sealer of Weights and Measures uses the hogshead as a unit of measures). The unit of the vessel capacity measurement does not have any impact on the measurement as a baseline specification. Vessels

that submit hold capacity measurements in hogsheads, or any other unit of measure, will still be limited in any vessel replacement or upgrade to 10 percent above the baseline hogshead (or other) measurement. If the volumetric unit differs between vessels during an upgrade or replacement, accepted methods of unit conversion will be used (ex. 1 hogshead = 1225 lb = 21.8 ft³). While we understand the importance of having a standardized unit of measure for vessel holds in the mackerel and herring fisheries for other purposes, such standardization is not necessary for the capacity measurement to function as a baseline specification.

Comment 3: A vessel owner with a mackerel permit commented that the fish hold certification requirement is too expensive for small vessels that only catch minimal amounts of mackerel.

Response: The vessel hold capacity measurement requirement is only required for vessels with Atlantic mackerel Tier 1 and 2 limited access permits. The trip limits for Tier 1 and Tier 2 permits are unlimited mackerel, and 135,000 lb per trip or per calendar day respectively. Vessels that are issued Tier 1 and Tier 2 mackerel permits are predominantly large boats with larger catches than the commenter described, and therefore smaller vessels that land minimal mackerel are not subject to the vessel hold capacity measurement requirement. For smaller vessels with minimal mackerel landings, NMFS recommends obtaining either a Tier 3 limited access permit, which has a 100,000 lb-trip limit, or an Atlantic mackerel open access permit, which has a 20,000 lb-trip limit, recognizing that after the limited access program application period has expired, vessels will be prohibited from upgrading from a low to a high possession limit Tiered permit. Neither of these permits would require obtaining and submitting a vessel hold capacity measurement.

Comment 4: A member of the public commented generally against the fishing industry and NOAA.

Response: This comment did not address the subject of this rulemaking and therefore does not warrant a specific response within this rule.

Classification

The Administrator, Northeast Region, NMFS, determined that this framework adjustment to the Atlantic Mackerel, Squid, and Butterfish FMPs is necessary for the conservation and management of the Atlantic mackerel, butterfish, fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published in the proposed rule and is not repeated here. No comments were received, and no new information has been received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

The Assistant Administrator for Fisheries finds good cause under section 553(d) of the Administrative Procedure Act to waive the 30-day delay in effectiveness for this action. Due to a delay in rulemaking, this action extends the deadline for Tier 1 and 2 Atlantic mackerel vessels to complete vessel hold capacity measurements from December 31, 2012, to December 31, 2013. If

the effectiveness of this rule was delayed for 30-days from the date of publication, vessels issued Tier 1 and 2 mackerel permits would still be required to submit hold capacity measurements by December 31, 2012, therefore invalidating the 1 year extension in this action. Because the majority of Tier 1 and 2 mackerel vessels have been waiting to obtain and submit vessel hold capacity measurements to NMFS until this rulemaking was published in the Federal Register, they would have minimal time and potentially added expense to do so if the deadline was not extended as a result of the 30-day delay in effectiveness. In addition, vessels would be required to have hold capacity measurements completed by the original entities approved under Amendment 11 to the MSB FMP. As this rulemaking broadens the scope of entities and individuals approved to complete vessel hold capacity measurements, delaying this rule would result in economic harm to the vessels that are subject to the capacity measurement requirement by limiting their options and constraining their time for obtaining vessel capacity measurements.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: November 27, 2012

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries,

performing the functions and duties of the

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 648.4, paragraph (a)(5)(iii)(H)(1) is revised to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(5) * * *

(iii) * * *

(H) * * *

(1) In addition to the baseline specifications specified in paragraph (a)(1)(i)(H) of this section, the volumetric fish hold capacity of a vessel at the time it was initially issued a Tier 1 or Tier 2 limited access mackerel permit will be considered a baseline specification. The fish hold capacity measurement must be certified by one of the following qualified individuals or entities: an individual credentialed as a Certified Marine Surveyor with a fishing specialty by the National Association of Marine Surveyors (NAMS); an individual credentialed as an Accredited Marine Surveyor with a fishing specialty by the Society of Accredited Marine Surveyors (SAMS); employees or agents of a classification society approved by the Coast Guard pursuant to 46 U.S.C. 3316(c); the Maine State Sealer of Weights and Measures; a professionally-licensed and/or registered Marine Engineer; or a Naval Architect with a professional engineer license. Owners whose vessels qualify for a Tier 1 or Tier 2 mackerel permit must submit a certified fish hold capacity measurement to NMFS by December 31, 2013, or with the first vessel replacement

application after a vessel qualifies for a Tier 1 or Tier 2 mackerel permit, whichever is sooner.

The fish hold capacity measurement submitted to NMFS as required in this paragraph

(a)(5)(iii)(H)(1) must include a signed certification by the individual or entity that completed the measurement, specifying how they meet the definition of a qualified individual or entity.

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[FR Doc. 2012-29140 Filed 12/03/2012 at 8:45 am; Publication Date: 12/04/2012]